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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

WHITE, RODNEY BARNETT

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,956

Applicant(s)

BAUER, BO

Examiner

Rodney B. White

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 and 27-30 is/are rejected.
- 7) ☒ Claim(s) 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "lateral taper" on the "orthopedic upper surface" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 15 is objected to because of the following informalities: Applicant uses the term "Velcro" in claim 15 which is not acceptable. Trademarked terms are not allowed in claim language. Applicant must change "Velcro" to - - hook-and-loop fastener - -. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Is the "lateral taper" really shown in the "orthopedic upper surface" as defined in claim 5?

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-4 , 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemaire (U.S. Patent No. 3,897,102).

Lemaire teaches the structure as claimed (See Figures 1-15 and specification). The head aperture being adjustable in dimension is disclosed by attaching or removing the pads 47,49, slidable sponge pads, both of which will reduce the size or when

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attached or enlarge it when removed, or providing a larger aperture (See column 3, lines 5-37).

Claims 1-4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Rowland (U.S. Patent No. 4,606,086).

Rowland teaches the structure as claimed (See Figures 1-3 and specification).
The head aperture being adjustable in dimension (See column 2, lines 40-47).

Claims 1-2, 4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Finkelstein (U.S. Patent No. 4,891,854).

Finkelstein teaches the structure as claimed (See Figures 1-5 and specification).

Claims 1-2, 4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Prager (U.S. Patent No. 4,941,222).

Prager teaches the structure as claimed (See Figures 1-5 and specification).

Claims 1-2, 4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Prager (U.S. Patent No. 5,237,713).

Prager teaches the structure as claimed (See Figures 1-5 and specification).

Claims 1-2, 4, 11-13, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (U.S. Patent No. 5,222,779).

Johnson teaches the structure as claimed (See Figures 1-5 and specification).

Claims 1-2, 4, 11-13, 19, 22, and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Jackson et al (U.S. Patent Application Publication No. 2004/0108757 A1).

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Jackson et al teaches the structure as claimed (See Figures 1-6 and specification).

Claims 1-2, 4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Sisti (U.S. Patent Application Publication No. 2002/0079731 A1).

Sisti teaches the structure as claimed (See Figures 1-4 and specification).

Claims 1-2, 4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard (U.S. Patent No. 5,926,871).

Howard teaches the structure as claimed (See Figures 1- and specification).

Claims 1-2, 4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Umbrianna (U.S. Patent No. 5,466,039).

Umbrianna teaches the structure as claimed (See Figures 3-8 and specification), magazine rack 50.

Claims 1-2, 4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Kostuk (U.S. Patent No. 5,624,157).

Kostuk teaches the structure as claimed (See Figures 1-3 and specification).

Claims 1-2, 4-5, 7-8, 19, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Sewell (U.S. Patent No. 5,946,749).

Sewell teaches the structure as claimed (See Figures 1-4 and specification).

Claims 1-2, 4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Robillard et al (U.S. Patent No. 5,829,080).

Robillard et al teaches the structure as claimed (See Figures 1-5 and specification).

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Claims 1-2 , 4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Boggs (U.S. Patent No. 5,950,259).

Boggs teaches the structure as claimed (See Figures 1-5 and specification).

Claims 1-2 , 4, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Diamond (U.S. Patent No. 6,059,365).

Diamond teaches the structure as claimed (See Figures 1-5 and specification).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond
In view of Bohme (U.S. Patent No. 4,083,068).

Diamond teaches the structure substantially as claimed but does not teach the biasing member comprises a spring. However, Bohme teaches the concept of a biasing member to include a spring to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the lounge chair, as taught by Diamond, to include a biasing member comprising a spring, as taught by Bohme, since it would provide an easier method of adjusting the backrest.

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Claims 1, 4, and 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bohme (U.S. Patent No. 4,083,068) in view of Diamond

Bohme teaches the structure substantially as claimed but does not teach the backrest section having a head aperture. However, Diamond teaches a head aperture to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the lounge chair, as taught by Bohme, to include a head aperture, as taught by Diamond, since it would allow a user to sun bathe in the prone position.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond In view of Gibriano (U.S. Patent NO. 5,524,957) and Hofmeyer (U.S. Patent No. 5,251,956 (

Diamond teaches the structure substantially as claimed but does not teach a pull-out tray However, Gibriano and Hofmeyer teach alternative conventional pull-out trays to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the lounge chair, as taught by Diamond, to include a pull-out tray, as taught by Gibriano and Hofmeyer, since it would provide a shelf or additional storage for other items a user might need or use while sunbathing or simply lounging.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sewell in view of Gibriano (U.S. Patent No. 5,524,957) and Hofmeyer (U.S. Patent No. 5,251,956)

Sewell teaches the structure substantially as claimed but does not teach a pull-out tray However, Gibriano and Hofmeyer teach alternative conventional pull-out trays

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to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the lounge chair, as taught by Sewell, to include a pull-out tray, as taught by Gibriano and Hofmeyer, since it would provide a shelf or additional storage for other items a user might need or use while sunbathing or simply lounging.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond In view of Lindsey et al (U.S. Patent No. 6,109,685)

Diamond teaches the structure substantially as claimed but does not teach wheels attached to the legs of the lounge chair. However, Lindsey et al teach wheels on the legs of lounge chair to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the lounge chair, as taught by Diamond, to include wheels on the legs, as taught by Lindsey et al, since it would make moving the chair from one location to another much easier.

Claim 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al In view of Rocha (U.S. Patent No. 5,275,463)

Jackson et al teach the structure substantially as claimed but does not teach the cushion is secured to the lounge chair by straps. However, Rocha teaches securing a cushion of a lounge chair by straps that use Velcro to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the lounge chair, as taught by Jackson et al, to secure the cushion to the lounge chair using straps, as taught by Rocha, since it the straps are an alternative conventional method to the corner pockets or and elastic material Jackson et al uses and since the elastic pockets are prone to break after much wear and sometimes come off inadvertently.

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Claim 16-18, 20-21, 23, 25, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowland In view of Sroub (U.S. Patent No. 4,264,102) and Guleserian (U.S. Patent No.. (U.S. Patent No. 5,297,850)

Rowland teach the structure substantially as claimed but does not teach the is predominantly made from wood. However, Sroub and Guleserian teach wooden lounge chairs . Guleserian even teaches the upper orthopedic surface as having a convex surface. It would have been obvious and well within the level of ordinary skill in the art to modify the lounge chair, as taught by Jackson et al, make the chair from wood , as taught by Sroub and Guleserian, since the wooden slats are an alternative conventional material for use in making such chairs and would also make a stronger, sturdier chair.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowland.

Rowland teaches an obvious use of the structures as claimed.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemaire.

Lemaire teaches an obvious use of the structures as claimed.

Claim 26 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Prior art does not teach the structure defined in claim 26.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yoder, Kofoed, and Schroeder teach structure similar to the present invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney B. White whose telephone number is (703) 308-2276. The examiner can normally be reached on 5:30 AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rodney B. White,
Patent Examiner
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July 23, 2004

Rodney B. White

Rodney B. White
Patent Examiner